

SUPREME COURT OF THE UNITED STATES.

No. 41.—OCTOBER TERM, 1927.

Atlantic Coast Line Railroad Com- pany, Petitioner, vs. Ida May Southwell, Administratrix of H. J. Southwell.	} On Writ of Certiorari to the Supreme Court of the State of North Caro- lina.
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[October 31, 1927.]

Mr. Justice HOLMES delivered the opinion of the Court.

This is an action brought against the petitioner by the administratrix and widow of one of the petitioner's employees, for the death of her husband by a murder which it is alleged that the petitioner 'with gross negligence wilfully and wantonly caused, permitted and allowed.' In view of the decision in *Davis v. Green*, 260 U. S. 349, the plaintiff did not attempt to hold the petitioner liable as principal in the act, but relied upon its failure to prevent the death. The Supreme Court of North Carolina upheld a judgment for the plaintiff. 191 N. C. 153. It is admitted that the action is based upon the Federal Employers Liability Act of April 22, 1908, c. 149, § 2; 35 Stat. 65, and the question is whether there was any evidence that the death resulted in whole or in part from the negligence of any officer of the petitioning road, under the law as applied by this Court. *New Orleans & Northeastern R. R. Co. v. Harris*, 247 U. S. 367, 371.

It would be straining the language of the Act somewhat to say in any case that a wilful homicide 'resulted' from the failure of some superior officer to foresee the danger and to prevent it. In this case at all events we are of opinion that there was no evidence that warrants such a judgment. It is not necessary to state the facts in detail. Those mainly relied upon are that Fonvielle, the general yard master knew that Southwell, the man who was killed, on previous occasions had used threatening language to Dallas, who shot Southwell; that Fonvielle knew or ought to have known that they were likely to meet when they did; that Fonvielle was with

Dallas, his subordinate, just before that moment and that Dallas said to him "Cap. all I want to do is to ask Southwell to lay off of me and let me alone", and that Fonvielle said that he must not see Southwell, that if he saw him and talked to him it might bring about unpleasant consequences; that Fonvielle left Dallas and after having gone a short distance saw him and Southwell approaching each other and had taken a few steps towards them with a view to separate them in case of an altercation, but that before he had time to reach them the shot was fired. Fonvielle knew that Dallas had a pistol, but there was a strike at the time, Dallas was a special policeman and had a right to carry it and not unnaturally did. The only sinister designs of which there is any evidence were of Southwell against Dallas, unless Dallas' remark just before the shooting be taken to foreshadow the event, which it certainly did not seem to until after the event had happened. It appears to us extravagant to hold the petitioner liable in a case like this. See *St. Louis-San Francisco Ry. Co. v. Mills*, 271 U. S. 344.

Judgment reversed.

Mr. Justice SUTHERLAND was absent.

A true copy.

Test:

Clerk, Supreme Court, U. S.